

House Bill 965

By: Representatives Fludd of the 66<sup>th</sup>, Bruce of the 64<sup>th</sup>, Buckner of the 130<sup>th</sup>, McKillip of the 115<sup>th</sup>, and Thomas of the 100<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste  
2 management, so as to change certain provisions relating to definitions relative to solid waste  
3 management; to change certain provisions relating to powers and duties of the director of the  
4 Environmental Protection Division relative to solid waste management; to change certain  
5 provisions relating to authority to enter property for inspection and investigation relative to  
6 solid waste management; to change certain provision relating to director's orders for  
7 corrective action relative to solid waste management; to change certain provisions relating  
8 to hearings and review of actions and orders relative to solid waste management; to change  
9 certain provisions relating to civil penalties and procedures for violations relative to solid  
10 waste management; to change certain provisions relating to criminal penalties for violations  
11 relative to solid waste management; to change certain provisions relating to definitions  
12 relative to hazardous waste management; to change certain provisions relating to inspections  
13 and investigations relative to hazardous waste management; to change certain provisions  
14 relating to proceedings for enforcement relative to hazardous waste management; to change  
15 certain provisions relating to hearings on contested matters and judicial review relative to  
16 hazardous waste management; to change certain provisions relating to civil penalties and  
17 procedures for violations relative to hazardous waste management; to change certain  
18 provisions relating to criminal penalties relative to hazardous waste management; to repeal  
19 conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

22 Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste  
23 management, is amended in Code Section 12-8-22, relating to definitions relative to solid  
24 waste management, by adding a new paragraph to read as follows:

1 "(40.1) 'Treatment,' with respect to solid waste, means any thermal, physical, chemical, or  
2 biological processes that change the characteristics of such waste in order to reduce its  
3 volume or facilitate its disposal or recovery."

#### 4 SECTION 2.

5 Said chapter is further amended by revising paragraph (4) of subsection (a) of Code Section  
6 12-8-23.1, relating to powers and duties of the director of the Environmental Protection  
7 Division relative to solid waste management, as follows:

8 "(4) To make investigations, analyses, and inspections to determine and ensure  
9 compliance with this part, the rules and regulations promulgated under this part, and any  
10 permits or orders which the director may issue, and to establish and implement a program  
11 to follow up and ensure that corrective action is taken regarding any violations;"

#### 12 SECTION 3.

13 Said chapter is further amended by revising Code Section 12-8-29.1, relating to authority to  
14 enter property for inspection and investigation relative to solid waste management, as  
15 follows:

16 "12-8-29.1.

17 The director or his or her duly authorized representatives shall have the power to enter at  
18 reasonable times upon any private or public property for the purpose of inspection and  
19 investigation of conditions relating to solid waste handling in this state. The director shall  
20 establish and implement a program of regular inspections of facilities for purposes of this  
21 Code section."

#### 22 SECTION 4.

23 Said chapter is further amended by revising Code Section 12-8-30, relating to director's  
24 orders for corrective action relative to solid waste management, as follows:

25 "12-8-30.

26 Whenever the director has reason to believe that a violation of any provision of this part  
27 or any rule or regulation adopted pursuant to this part has occurred, he or she shall attempt  
28 to obtain a remedy with the violator or violators by conference, conciliation, or persuasion.

29 In the case of failure of such conference, conciliation, or persuasion to effect a remedy to  
30 such violation, the director may issue an order directed to such violator or violators. The  
31 order shall specify the provisions of this part or rule or regulation alleged to have been  
32 violated and shall order that necessary corrective action be taken within a reasonable time  
33 to be prescribed in such order, and any facility that is subject to such an order shall cease  
34 operation unless and until such corrective action has been taken. Any order issued by the

1 director under this part shall be signed by the director. Any such order shall become final  
2 unless the person or persons named therein request in writing a hearing no later than 30  
3 days after such order is served on such person or persons."

#### 4 SECTION 5.

5 Said chapter is further amended by revising Code Section 12-8-30.2, relating to hearings and  
6 review of actions and orders relative to solid waste management, as follows:

7 "12-8-30.2.

8 All hearings on and review of contested matters and orders and all hearings on and review  
9 of any other enforcement actions or orders under this part shall be provided and conducted  
10 in accordance with subsection (c) of Code Section 12-2-2. No stay of any such  
11 enforcement action or order shall be issued or granted pending a hearing or judicial review,  
12 the provisions of Code Section 50-13-19 to the contrary notwithstanding."

#### 13 SECTION 6.

14 Said chapter is further amended by revising subsection (a) of Code Section 12-8-30.6,  
15 relating to civil penalties and procedures for violations relative to solid waste management,  
16 as follows:

17 "(a) Any person, provided that person is a public authority or a city or county government  
18 located within the boundaries of Georgia, violating any provision of this part or rules or  
19 regulations adopted pursuant to this part or intentionally or negligently failing or refusing  
20 to comply with any final or emergency order of the director issued as provided in this part  
21 shall be liable for a civil penalty of not less than \$250.00 but not to exceed \$1,000.00 for  
22 such violation and for an additional civil penalty of not less than \$100.00 per day but not  
23 to exceed \$500.00 for each day during which such violation continues. Any person other  
24 than a public authority or a city or county government located within the boundaries of  
25 Georgia violating any provision of this part or intentionally or negligently failing or  
26 refusing to comply with any final or emergency order of the director issued as provided in  
27 this part shall be liable for a civil penalty of not less than \$2,500.00 per day but not to  
28 exceed \$25,000.00 per day for each day during which such violation continues."

#### 29 SECTION 7.

30 Said chapter is further amended by revising subsection (a) of Code Section 12-8-30.8,  
31 relating to criminal penalties for violations relative to solid waste management, as follows:

32 "(a) Any person who:

33 (1) Knowingly transports or causes to be transported any solid waste ~~as defined in this~~  
34 ~~part~~ to a facility which does not have a permit, which does not have a variance pursuant

1 to this part, or which is not subject to an order of the director which specifically  
2 authorized continued operation of such facility;

3 (2) Knowingly treats, processes, stores, or disposes of any solid waste ~~as defined in this~~  
4 ~~part~~:

5 (A) Without a permit or an order of the director allowing such treatment, processing,  
6 storage, or disposal of solid waste;

7 (B) In knowing violation of any material condition or requirement of such permit or  
8 order; or

9 (C) In knowing violation of any material condition or requirement of any applicable  
10 regulations or standards adopted by the board in accordance with Code Section  
11 12-8-23;

12 (3) Knowingly omits material, information, or makes any false material statement or  
13 representation in any application, label, manifest, record, report, permit, or other  
14 document filed, maintained, or used for purposes of compliance with this part or  
15 regulations promulgated pursuant to this part;

16 (4) Knowingly processes, stores, treats, transports, disposes of, or otherwise handles any  
17 solid waste ~~as defined in this part~~, and who knowingly destroys, alters, conceals, or fails  
18 to file any record, application, manifest, report, or other document required to be  
19 maintained or filed for purposes of compliance with this part; or

20 (5) Knowingly transports without a manifest or causes to be transported without a  
21 manifest; any solid waste required by this part to be accompanied by a manifest

22 shall, upon conviction, be subject to a fine of not less than \$5,000.00 per day but not more  
23 than \$50,000.00 for each day of violation or imprisonment for not less than one nor more  
24 than two years or, in the case of a violation of paragraph (1) or (2) of this subsection, three  
25 years, or both. If conviction is for a violation committed after a first conviction of such  
26 person under this subsection, the maximum punishment under the respective paragraphs  
27 shall be doubled with respect to both fine and imprisonment."

## 28 SECTION 8.

29 Said chapter is further amended by revising paragraphs (9) and (10) of Code Section 12-8-62,  
30 relating to definitions relative to hazardous waste management, as follows:

31 "(9) 'Hazardous constituent' means any substance listed as a hazardous constituent in  
32 regulations promulgated by the administrator of the United States Environmental  
33 Protection Agency pursuant to the federal act which are in force and effect on February  
34 1, 1996, codified as Appendix VIII to 40 C.F.R. Part 261—Identification and Listing of  
35 Hazardous Waste. Such term shall also include any degrade of a pesticide, including but  
36 not limited to n-propyl mercaptan.

(10) 'Hazardous waste' means any solid waste which has been defined as a hazardous waste in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on January 1, 2006, codified as 40 C.F.R. Section 261.3 and any designated hazardous waste. Such term shall also include any pesticide, including but not limited to ethoprop."

#### SECTION 9.

Said chapter is further amended by revising subsection (a) of Code Section 12-8-70, relating to inspections and investigations relative to hazardous waste management, as follows:

"(a) The director or the director's authorized representative, upon presentation of his or her credentials, shall have a right to enter upon, to, or through premises of persons subject to this article, or premises whereon a violation of the article or rules and regulations is reasonably believed to be occurring or is reasonably believed to be about to occur, to investigate, take samples, copy all records relating to hazardous wastes, and inspect for compliance with the requirements imposed under this article or the rules and regulations or to determine whether such a violation or threatened violation exists in accordance with the following purposes:

(1) Determining ~~For the purpose of determining~~ whether any person subject to the requirements of this article is in compliance with any standard or requirement imposed pursuant to this article;

(2) Investigating ~~For the purpose of investigating~~ conditions relating to hazardous waste management or hazardous waste management practices where the director is in possession of information sufficient to form a reasonable belief that a violation of this article or the rules and regulations is occurring or is about to occur;

(3) Determining ~~For the purpose of determining~~ whether there has been a violation of any of the provisions of this article, the rules and regulations promulgated under this article, or any permit or order issued pursuant to this article and the rules and regulations; or

(4) Determining ~~For the purpose of determining~~ whether a release of hazardous wastes, hazardous constituents, or hazardous substances is occurring or has occurred.

The director shall establish and implement a program of regular inspections of facilities for purposes of this subsection."

#### SECTION 10.

Said chapter is further amended by revising subsections (a) and (b) of Code Section 12-8-71, relating to proceedings for enforcement relative to hazardous waste management, as follows:

1 "(a) Whenever the director has reason to believe that a violation of any provision of this  
2 part, a violation of any rule or regulation of the board, or a violation of any order of the  
3 director has occurred, the director shall attempt to remedy the same by conference,  
4 conciliation, and persuasion. In the case of failure of such conference, conciliation, or  
5 persuasion to correct or remedy any violation, the director may issue an order directed to  
6 such violator or violators. The order shall specify the provisions of this part, the rules and  
7 regulations, or the order alleged to have been violated and may direct that necessary  
8 corrective action be taken within a reasonable time to be prescribed in the order, and any  
9 facility that is subject to such an order shall cease operation unless and until such corrective  
10 action has been taken.

11 (b) Whenever the director has reason to believe that there is or has been a release of  
12 hazardous waste or hazardous constituents into the environment, regardless of the time at  
13 which release of such hazardous waste or hazardous constituents occurred, and has reason  
14 to believe that such release poses a danger to health or the environment, the director shall  
15 attempt to obtain corrective action for such release by conference, conciliation, and  
16 persuasion. In the case of failure of such conference, conciliation, or persuasion to obtain  
17 corrective action, the director may issue an order directed to any person, including any past  
18 or present generator, past or present transporter, or past or present owner or operator of a  
19 hazardous waste treatment, storage, or disposal facility, who has contributed or who is  
20 contributing to such release. The order may direct that necessary corrective action be taken  
21 within a reasonable time to be prescribed in the order, and any facility that is subject to  
22 such an order shall cease operation unless and until such corrective action has been taken."

## 23 SECTION 11.

24 Said chapter is further amended by revising Code Section 12-8-73, relating to hearings on  
25 contested matters and judicial review relative to hazardous waste management, as follows:

26 "12-8-73.

27 All hearings on and the review of contested matters, orders, or permits and all hearings on  
28 and the review of any other enforcement actions or orders under this article shall be  
29 provided and conducted in accordance with subsection (c) of Code Section 12-2-2. The  
30 hearing and review procedure herein provided is shall be to the exclusion of all other means  
31 of hearing or review. No stay of any such enforcement action or order shall be issued or  
32 granted pending a hearing or judicial review, the provisions of Code Section 50-13-19 to  
33 the contrary notwithstanding."

**SECTION 12.**

Said chapter is further amended by revising subsection (a) of Code Section 12-8-81, relating to civil penalties and procedures for violations relative to hazardous waste management, as follows:

"(a) Any person violating any provision of this article, the rules or regulations effective under this article, or any permit condition or limitation established pursuant to this article or any person negligently or intentionally failing or refusing to comply with any final or emergency order of the director issued as provided in this article shall be liable for a civil penalty of not less than \$2,500.00 per day but not to exceed \$25,000.00 per day. Each day during which the violation or failure or refusal to comply continues shall be a separate violation."

**SECTION 13.**

Said chapter is further amended by revising subsections (a) and (b) of Code Section 12-8-82, relating to criminal penalties relative to hazardous waste management, as follows:

"(a) Any person who:

(1) Knowingly transports or causes to be transported any hazardous waste ~~as defined in this article~~ to a facility which does not have a permit or interim status pursuant to Code Section 12-8-66, which does not have a variance pursuant to Code Section 12-8-69, or which is not subject to an order of the director which specifically authorized continued operation of such facility;

(2) Knowingly treats, stores, or disposes of any hazardous waste ~~as defined in this article~~:

(A) Without a permit or interim status pursuant to Code Section 12-8-66, a variance pursuant to Code Section 12-8-69, or an order of the director allowing such treatment, storage, or disposal of hazardous waste;

(B) In knowing violation of any material condition or requirement of such permit, interim status, variance, or order; or

(C) In knowing violation of any material condition or requirement of any applicable regulations or standards promulgated in accordance with Code Section 12-8-64;

(3) Knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this article or regulations promulgated in accordance with Code Section 12-8-64;

(4) Knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste ~~as defined in this article~~, whether such activity took place before or takes place after March 14, 1985, and who knowingly destroys, alters, conceals,

1 or fails to file any record, application, manifest, report, or other document required to be  
2 maintained or filed for purposes of compliance with this article or regulations  
3 promulgated in accordance with Code Section 12-8-64; or

4 (5) Knowingly transports without a manifest or causes to be transported without a  
5 manifest; any hazardous waste required by this article or regulations promulgated in  
6 accordance with Code Section 12-8-64 to be accompanied by a manifest

7 shall, upon conviction, be subject to a fine of not less than \$5,000.00 per day but not more  
8 than \$50,000.00 for each day of violation; or imprisonment for not less than one nor more  
9 than two years; or, ~~three years~~ in the case of a violation of paragraph (1) or (2) of this  
10 subsection, three years, or both such fine and imprisonment. If the conviction is for a  
11 violation committed after a first conviction of such person under this subsection, the  
12 maximum punishment under the respective paragraphs shall be doubled with respect to  
13 both fine and imprisonment.

14 (b) Any person who knowingly transports, treats, stores, disposes of, or exports any  
15 hazardous waste ~~as defined in this article~~ in violation of paragraph (1), (2), (3), (4), or (5)  
16 of subsection (a) of this Code section and who knows at that time that by such action  
17 another person is placed in imminent danger of death or serious bodily injury shall, upon  
18 conviction, be subject to a fine of not less than \$25,000.00 but not more than \$250,000.00  
19 or imprisonment for not less than one nor more than 15 years, or both. A defendant that  
20 is an organization shall, upon conviction of violating this subsection, be subject to a fine  
21 of not less than \$100,000.00 but not more than \$1 million."

#### 22 SECTION 14.

23 All laws and parts of laws in conflict with this Act are repealed.